

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:

HORNACK, Janmarie, et al. Docket No. 30900-CTN

Serial No.: Group Art Unit No.

Filed:

DIETARY SUPPLEMENT CONTAINING ALKALINE ELECTROLYTE BUFFERS

Examiner:

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

DECLARATION OF

1. I, Robert Berger, am a resident of 1125 Crystal Way
Delray Beach, FL 33444 USA.

2. Attached hereto as Exhibit A is a copy of my (resume) or (curriculum vitae).

3. I have been advised that Janmarie Hornack, Overland Park, Kansas and Lawrence E. Dorman, Grain Valley, Missouri, the named co-inventors of the above patent application, filed an application Serial No. 09/706-05 under the above title, with this application being a continuation of the >706 application.

4. I have been further advised that the above referenced continuation application describes improved dietary or therapeutic supplements in which a solid dietary and/or therapeutic supplement agent having a pH of 6 or less and chosen from vitamins, bioflavonoids, minerals, trace minerals, whole plant food products containing phytonutrients, herbs and mixtures thereof, is combined with a sufficient amount of an electrolyte additive selected from the group of calcium, magnesium and potassium alkaline electrolytes, to increase the pH of the combined ingredients to a pH of from about 8 to about 12.5, which increases the bioavailability and effectiveness of the agent in the person=s stomach.

5. I have reviewed the Declaration of Janmarie Hornack dated August 6, 2002, and attachments Exhibits A and B to her Declaration. Ms. Hornack in her notebook entry reports adding a sufficient amount of a magnesium, calcium and/or potassium electrolyte to seven bioavailable nutrients, each of which had a pH below 6, thereby increasing the pH of the combination to at least 8.

6. It is my understanding from Ms. Hornack=s Declaration the inventors discovered that

EXHIBIT

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by adding a selected electrolyte to acidic solid dietary and/or therapeutic supplement agents having a pH of 6 or less to increase the pH of the combination to a level such that the pH of the supplement is at an ideal pH of about 8 to about 12.5, two synergistic phenomena occur. As a consequence, the agent in the composition is more absorbable and more rapidly and efficiently digested in the cardio fundic portion of the individual's stomach. The majority of the agent is digested within a shorter time with less pH fluctuation caused by the composition ingested than would otherwise be the case, if the agent remained acidic. Furthermore, incorporation of a critical amount of the electrolyte factors in the composition provides for an improved intracellular/extracellular transfer rate of the dietary and/or therapeutic supplement agent, contributing to the increased bioavailability and effectiveness of the supplement agent.

7. I have given consideration to the subject matter of claim 1 of the Hornack/Dorman continuation application, which I understand reads as follows:

An improved dietary and/or therapeutic supplement composition consisting essentially of, in combination:

a solid dietary and/or therapeutic supplement agent selected from the group consisting of water soluble vitamins, bioflavonoids, minerals, trace minerals, whole plant food products containing phytonutrients, herbs, and mixtures of the foregoing that are known to promote health and well being and each having a pH of 6 or less which upon ingestion with food or a beverage would limit the availability of the agent to the person ingesting the agent; and

an electrolyte additive selected from the group consisting of calcium, magnesium and potassium alkaline electrolytes, a sufficient amount of the alkaline additive being provided in combination with the agent to raise the pH of the combination to a level of from about 8 to about 12.5 and enough electrolytes to improve bioavailability at cellular levels upon ingestion of the supplement composition thereby increasing the effectiveness and utilization of the agent in the person's body.

8. I am of the opinion it would be obvious to one skilled in this art from a review of the Hornack notebook entry, Exhibit B to the Hornack Declaration, that the same improved results would be obtained with obvious variations and adaptations of the specific dietary and/or therapeutic supplement agents recorded by Ms. Hornack in Exhibit B of her declaration, such as the acidic water soluble vitamins, bioflavonoids, minerals, phytonutrients and herbs recited in the claim language of paragraph 7 above. 9. I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that wilful, false

statements and the like are punishable by fine or imprisonment, or both, under 1001 of Title 18 of the United States Code.

Signature

ATTN: DR DORMAN

by adding a selected electrolyte to acidic solid dietary and/or therapeutic supplement agents having a pH of 6 or less to increase the pH of the combination to a level such that the pH of the supplement is at an ideal pH of about 8 to about 12.5, two synergistic phenomena occur. As a consequence, the agent in the composition is more absorbable and more rapidly and efficiently digested in the cardio fundic portion of the individual's stomach. The majority of the agent is digested within a shorter time with less pH fluctuation caused by the composition ingested than would otherwise be the case, if the agent remained acidic. Furthermore, incorporation of a critical amount of the electrolyte factors in the composition provides for an improved intracellular/extracellular transfer rate of the dietary and/or therapeutic supplement agent, contributing to the increased bioavailability and effectiveness of the supplement agent.

7. I have given consideration to the subject matter of claim 1 of the Hornack/Dorman continuation application, which I understand reads as follows:

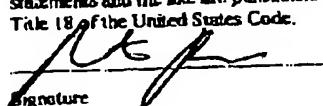
An improved dietary and/or therapeutic supplement composition consisting essentially of, in combination:

a solid dietary and/or therapeutic supplement agent selected from the group consisting of water soluble vitamins, bioflavonoids, minerals, trace minerals, whole plant food products containing phytonutrients, herbs, and mixtures of the foregoing that are known to promote health and well being and each having a pH of 6 or less which upon ingestion with food or a beverage would limit the availability of the agent to the person ingesting the agent; and

an electrolyte additive selected from the group consisting of calcium, magnesium and potassium alkaline electrolytes, a sufficient amount of the alkaline additive being provided in combination with the agent to raise the pH of the combination to a level of from about 8 to about 12.5 and enough electrolytes to improve bioavailability at cellular levels upon ingestion of the supplement composition thereby increasing the effectiveness and utilization of the agent in the person's body.

8. I am of the opinion it would be obvious to one skilled in this art from a review of the Hornack notebook entry, Exhibit A to the Hornack Declaration, that the same improved results would be obtained with obvious variations and adaptations of the specific dietary and/or therapeutic supplement agents recorded by Ms. Hornack in Exhibit B of her declaration, such as the acidic water soluble vitamins, bioflavonoids, minerals, phytonutrients and herbs recited in the claim language of paragraph 7 above. 9. I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that wilful, false

statements and the like are punishable by fine or imprisonment, or both, under 1001 of Title 18 of the United States Code.


Signature

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Robert Berger, M.S., Ph.D., CPT.

Dr. Robert Berger holds Ph.D's in Biochemistry and Biomedical Pharmacology from the Universities of Tennessee and Pennsylvania, respectively. He also holds a Master of Science degree in Exercise Physiology with minors in Sports Medicine, Biomedical Engineering and Veterinary Science. His background encompasses the fields of Sports Medicine, Bios fitness Training, Hormone Research, Nutrition for Disease, Molecular Biology and Animal Science. Dr. Berger is a Nationally Certified Fitness Consultant who was instrumental in the development of "Bios fitness Health Club", an on-line medically oriented exercise program located on the internet (www.Bios fitness.com). He is also currently active as a radio talk show co-host on various Florida stations, including WNN Health Talk Radio, WAXY Radio, WJNO Radio, and WINZ Superstation, as well as on both regional and national stations covering medical, scientific, nutritional, sports and anti-aging topics.

Dr. Berger was a California high-school All-State football and track athlete, a member of the nationally-ranked University of Tennessee Volunteer football and track teams and an Academic All-Southeastern Conference Athlete. During his graduate work he was a research associate and clinical instructor of Biochemistry and Pharmacology. His research involved the identification of the mechanisms of various fat-reducing substances and food supplements, their interactions with drugs, and their effects on aging in human and animal subjects. He also developed surgical catheterization techniques for drug infusion and blood monitoring in animal models.

After earning his Doctorates, he worked as a post-doctoral research fellow in Biomedicine at the University of Pennsylvania School of Veterinary Medicine and Hospital of University of Pennsylvania. Here he studied the toxicities of various drugs and their effects on growth and organ development in animals. He also established advanced surgical catheterization techniques to improve the efficiency of drug delivery and blood collection in mobile animals. Dr. Berger gained expertise in the processes of enzymology, enzyme kinetics, radioimmuno-assay techniques, molecular biology, lipid and protein chemistry, nutritional analysis, large/small animal surgery, and osmotic-pump implantations for pharmacologic studies.

Dr. Berger was a Technical Scientist for Sigma Chemical Company in St. Louis, Mo. where he was responsible for the evaluation of therapeutics for the research community. Here he also worked as a synthesis chemist for peptide neurochemicals.

Dr. Berger is co-founder of KB-Research Group which develops and markets

nutraceuticals for optimal health, anti-cancer, fitness and anti-aging for both humans and animals. His professional affiliations include I.D.E.A. (Affiliate of American Council on Exercise), American Council on Sports Medicine, American Association for the Advancement of Science, Foundation for Biomedical Research, American Association for Clinical Nutrition, Science-By-Mail Outreach Program for Kids and a regional officer of the Humane Society of the United States. He is also a scientific author with many publications in scientific and medical journals.